



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Scott E. Thomas, Esq.
Dickstein Shapiro LLP
1825 Eye Street, N.W.
Washington, D.C. 20006-5403

DEC 2 2009

RE: MUR 6230
Wynn for Congress

Dear Mr. Thomas:

On August 7, 2009, the Federal Election Commission (the "Commission") notified your client, Wynn for Congress and Curt Clifton in his official capacity as treasurer, that in the normal course of carrying out its supervisory responsibilities it ascertained information suggesting that your client violated the Federal Election Campaign Act of 1971, as amended (the "Act") and the matter was referred to the Office of the General Counsel for possible enforcement action. The Commission also provided your client with a copy of the referral.

After reviewing the referral and your client's response, the Commission on November 17, 2009, found reason to believe that Wynn for Congress and Curt Clifton in his official capacity as treasurer, violated 2 U.S.C. § 441a(f), 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i) and 110.2(b)(3)(i), provisions of the Act and the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

10044272910

Mr. Scott Thomas, Esq.
Page 2

We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis
Procedures

cc: Albert Wynn

10044272911

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Wynn for Congress and Curt Clifton,
in his official capacity as treasurer**

MUR 6230

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Wynn for Congress and Curt Clifton, in his official capacity as treasurer,¹ ("the Committee"), the principal campaign committee of Albert Wynn, failed to refund \$115,100 in apparent excessive contributions for the 2008 general election. After serving eight terms in the U.S. House of Representatives, Representative Albert Wynn lost the Democratic Primary for Maryland's Fourth Congressional District on February 12, 2008. The Committee accepted \$115,100 in general election contributions from individuals and multicandidate committees that had already contributed the maximum amount allowable for the 2008 primary election, which became excessive as of the date Wynn lost the primary.

As described in more detail below, the Commission finds reason to believe Wynn for Congress, and Curt Clifton, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting \$115,100 in excessive contributions, and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) by failing to return or refund the excessive contributions.

¹ Gregory M. Holloway resigned as treasurer of the Committee on June 18, 2008. Following his resignation, the Committee filed an amended Statement of Organization on October 15, 2008, naming Curt Clifton as treasurer.

II. FACTUAL AND LEGAL ANALYSIS

a. Facts

On May 20, 2008, RAD sent the Committee a Request for Additional Information ("RFAI") referencing the Committee's 2008 April Quarterly Report, filed with the Commission on April 15, 2008, following Wynn's loss in the primary election. The RFAI notified the Committee that the contributions it accepted for the general election before the primary election had to be either refunded, or redesignated to the primary election if there were net debts outstanding, since Wynn was not participating in the general election.

Representatives of the Committee communicated with the RAD analyst multiple times from June through October 2008 regarding the redesignation of general election contributions, and making appropriate changes to the 2008 April Quarterly Report, among other things. The Committee explained that it was having problems obtaining relevant records following the resignation of its treasurer, and that the Committee would ultimately like to terminate.

On October 31, 2008, the Committee submitted a written response to the RFAI that stated the Committee had used general election contributions to pay for primary election costs because it did not segregate its general election contributions from its primary election contributions. Therefore, the response stated, the Committee could not return the general election contributions because they were no longer available, but that it would use its best efforts to raise funds necessary to reimburse the general election contributors.

The Committee filed its Amended 2008 April Quarterly Report on November 3, 2008, disclosing \$115,100 in general election contributions from twenty-two individuals and twenty-four political action committees. All of the general election contributors had already contributed

10044272913

1 the maximum amount allowable for the primary election. See Wynn for Congress FEC

2 Disclosure Reports.

3 The Committee has not taken any corrective actions to remedy general election
4 contributions. On November 21, 2008, the RAD analyst told a representative of the Committee
5 that the Committee may be referred for additional action by the Commission. On its Amended
6 Termination Report, covering the period of April 1 through June 30, 2008; Amended 2008
7 October Quarterly Report; 2008 30 Day Post-General Report; 2008 Year End Report; 2009 April
8 Quarterly Report and 2009 July Quarterly Report; the Committee disclosed less than \$5,000 in
9 cash on hand and did not disclose any returns or refunds of the general election contributions in
10 question.

11 The Committee's response to the pre-reason to believe notification letter acknowledges
12 that it used general election contributions to pay for primary election related expenses, and that it
13 does not have funds available to refund general election contributions. It states that since Wynn
14 had never faced a serious primary challenger in past elections, the Committee's treasurer at the
15 time was unfamiliar with the Commission's regulations regarding the use of general election
16 funds for primary election expenses.

17 **b. Analysis**

18 The Committee accepted \$115,100 in contributions from individuals and multicandidate
19 political action committees ("PACs") that were designated for the 2008 general election. Under
20 the Federal Election Campaign Act of 1971, as amended ("the Act"), an individual may not
21 make a contribution to a candidate in excess of the limits at 2 U.S.C. § 441a(a)(1)(A) and
22 11 C.F.R. § 110.1(b)(1), set at \$2,300 per election during the 2008 election cycle, and
23 multicandidate political action committees may not make contributions in excess of \$5,000 per

10044272914

1 election. See 2 U.S.C. § 441a(a)(2)(A). Candidates and political committees are prohibited from
2 knowingly accepting contributions in excess of the limitations in section 441a. See 2 U.S.C.
3 § 441a(f). A primary election, general election, runoff election, and special election are all
4 considered an "election" under the Act, see 2 U.S.C. § 431(1)(A); 11 C.F.R. § 100.2, and
5 contribution limits are applied separately with respect to each election. See 11 C.F.R. § 110.1(j).
6 "If a candidate fails to qualify for the general election, any contributions designated for the
7 general election that have been received from contributors who have already reached their
8 contribution limit for the primary election would exceed FECA's contribution limits." AO 2007-
9 03 (Obama) at 3.

10 The Commission's regulations permit a committee to accept contributions for the general
11 election, prior to the primary election, if the committee employs an acceptable accounting
12 method to distinguish between primary and general election contributions. 11 C.F.R.
13 § 102.9(e)(1). An authorized committee's records must demonstrate that prior to the primary
14 election, the committee's recorded cash on hand was at all times equal to or in excess of the sum
15 of general election contributions received less the sum of general election disbursements made.
16 11 C.F.R. § 102.9(e)(2). If, however, the candidate loses the primary election and does not
17 otherwise run in the general election, the committee must, within 60 days: (1) refund the
18 contributions designated for the general election; (2) redesignate such contributions in
19 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in
20 accordance with 11 C.F.R. § 110.1(k)(3). See 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i),
21 110.2(b)(3)(i).

22 Because a committee does not have actual notice of the need to obtain redesignations
23 until the results of the primary are known, if a candidate loses the primary election but has

10044272915

1 accepted a contribution designated for the general election before the primary, the committee has
2 60 days from the date of the primary election to refund, redesignate, or reattribute such
3 contribution. *See* AO 1992-15 (Russo for Congress Committee) at 2; *see also The Campaign*
4 *Guide for Congressional Candidate and Committees* (April 2008) at 18. After a primary loss,
5 contributors no longer have a separate contribution limit for the general election. AO 2003-18
6 (Smith) at 3, AO 1986-17 (Green) at 4. Redesignation of general election contributions may
7 only occur to the extent that the amount redesignated does not exceed the contributor's
8 contribution limit for the primary and the amounts redesignated do not exceed the net debts
9 outstanding from the primary. *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii)
10 and (b)(3)(i); *see also* AO 1992-15 at 2. A committee's net debts outstanding are calculated, in
11 relevant part, based on the total amount of debts and obligations incurred for an election, less the
12 total cash on hand available to pay the debts and obligations, and any amounts owed to the
13 committee. 11 C.F.R. § 110.1(b)(3)(ii). If a committee deposits contributions that exceed its net
14 debts outstanding, it must, within 60 days of accepting the excessive contributions, refund,
15 redesignate, or reattribute the excessive contributions. 11 C.F.R. §§ 110.1(b)(3)(i),
16 110.2(b)(3)(i), *see also* 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3). Likewise, reattribution of a
17 general election contribution may only occur to the extent that such attribution does not exceed
18 the contributor's contribution limits. *See* 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03
19 (Obama) at 3.

20 In this case, the Committee accepted general election contributions totaling \$115,100
21 (\$41,600 from twenty-two individuals, and \$73,500 from twenty-four PACs), but failed to
22 return, refund, reattribute or redesignate the contributions within 60 days of the February 12,
23 2008, primary loss. *See* 11 C.F.R. § 102.9(e)(3). The Committee could not redesignate the

10044272916

1 general election contributions to the 2008 primary election because all of the general election
2 contributors had already contributed the maximum amount allowable for the primary election.
3 Moreover, reattribution of the Committee's general election contributions would not remedy the
4 Committee's acceptance of a contribution designated for an election in which Wynn was not
5 participating. See 11 C.F.R. § 110.1(k)(3). Therefore, the Committee's only option was to
6 return or refund the general election contributions, which it has not done. Although the
7 Committee informed RAD that it was incapable of returning the contributions, it represented that
8 it would use best efforts to raise funds necessary to reimburse the general election contributions.
9 In its response to the pre-reason to believe notification letter, the Committee indicates that it is
10 unable to raise any additional funds without discussing any efforts it may have made. See
11 11 C.F.R. § 102.9(e)(1). The Committee has consistently reported less than \$5,000 cash on hand
12 in its reports following the primary, far less than the \$115,100 necessary to refund the general
13 election contributions. AO 2007-03 (Obama) at 3.

14 Based on the foregoing, the Commission finds reason to believe that Wynn for Congress
15 and Curt Clifton, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by knowingly
16 accepting \$115,100 in general election contributions from individuals and multicandidate
17 committees that had already contributed the maximum amount allowable for the 2008 primary
18 election, which became excessive as of the date the candidate lost the primary; and 11 C.F.R.
19 §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) by failing to return or refund the excessive
20 contributions.

10044272917